UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

CRITCHFIELD PHYSICAL	
THERAPY, P.C., individually and on)
behalf of all others similarly-situated,)
)
Plaintiff,)
)
VS.) Case No. 4:12CV00268 AGI
TECHNEAL THE DIG)
TECHHEALTH, INC.,)
D 0 1)
Defendant.)

ORDER STAYING CASE

This matter is before the Court on Defendant's motion to stay the case. After careful consideration, the Court will grant Defendant's motion.

Plaintiff claimed in this putative class action that Defendant violated a regulation, 47 C.F.R. § 64.1200(a)(3)(iv), promulgated by the Federal Communication Commission ("FCC") under the Telephone Consumer Protection Act, 47 U.S.C. § 227, by faxing Plaintiff advertisements that did not have an opt-out notice. Defendant asks the Court to stay this action to enable Defendant to pursue an administrative remedy, in accordance with the suggestion by the Eighth Circuit Court of Appeals in *Nack v. Walburg*, 715 F.3d 680 (8th Cir. 2013), that also challenged the validity of the FCC regulation at issue as applied to faxes sent with consent, that the defendant in that case do so.

In opposition to the motion to stay, Plaintiff argues that Defendant has not met its burden of establishing that the faxes in question were sent with consent; that a stay should be denied under the primary jurisdiction doctrine; and that entering a potentially lengthy

stay would unduly prejudice Plaintiff's proposed class, especially since the FCC is unlikely to rule in Defendant's favor.

The record before the Court sufficiently establishes that the faxes involved in this case were sent with Plaintiff's consent. Plaintiff's other arguments against the stay are without merit and have been rejected in similar circumstances by this Court in *Nack* upon remand by the Eighth Circuit, *Nack v. Walburg*, No. 4:10CV00478 AGF (E.D. Mo. Sept. 12, 2013), and also by another court in this District, *St. Louis Heart Center, Inc. v. Forest Pharmaceuticals, Inc.*, No. 4:12CV02224 JCH (E.D. Mo. July 17, 2013).

Accordingly,

IT IS HEREBY ORDERED that Defendant's motion to stay is GRANTED.

(Doc. No. 69.)

IT IS FURTHER ORDERED that Defendant shall forthwith notify the Court of Defendant's filing of an administrative challenge to the regulation at issue; and of the FCC's ruling and any appeal filed in connection with Defendant's or any other entity's administrative challenge to the regulation.

IT IS FURTHER ORDERED that the Clerk of Court shall administratively close this matter until further notice.

AUDREY G. FLEISSIG

UNITED STATES DISTRICT JUDGE

Dated this 15th day of October, 2013.